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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,033	08/17/2001	Patricia C. Allen	0217.01	2685

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EXAMINER

PORTNER, VIRGINIA ALLEN

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 04/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/931,033

Applicant(s)
Allen et al

Examiner
Portner

Art Unit
1645



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 10, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-10 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 6, and 7 is/are allowed.
- 6) ☒ Claim(s) 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claims 1-4, 6-10 are pending; claims 5 and 11 have been canceled; claims 1 and 8 have been amended.

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Allowable Subject Matter

2. Claim 1-4, 6 and 7 are allowable, as the prior art of record does not teach, nor reasonable suggest the inoculation of chicks with an anticoccidial vaccine followed by providing a dietary regimen of an Echinacea supplement.

Rejections Withdrawn

3. Claims 1-5 rejected under 35 U.S.C. 103(a) as being unpatentable over Kutilek, III et al (US Pat. 5,770,217) in view of Schraner et al (1989) and Davis et al (US Pat. 4,544,548), in light of the Applicant's traversal made of record in paper number 9.
4. Claims 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Kutilek, III et al (US Pat. '217) in view of Davis et al ('548) and Schraner et al (1989) and further in view of Squires (US Pat. 6,355,684), in light of the Applicant's traversal made of record in paper number 9.

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Rejections Maintained

5. Claims 8 rejected under 35 U.S.C. 102(b) as being anticipated by Schraner et al (1989, abstract), for reasons of record in paper number 8, paragraph 6.
6. Claims 8 rejected under 35 U.S.C. 102(b) as being anticipated by Hockertz, S (1990), for reasons of record in paper number number 8, paragraph 7.
7. Claims 8-9 rejected under 35 U.S.C. 102(b) as being anticipated by Kutilek, III et al (US Pat. 5,770,217), for reasons of record in paper number 8, paragraph 8.
8. Claims 8 and 10 rejected under 35 U.S.C. 102(e) as being anticipated by Squires (US Pat. 6,355,684), for reasons of record in paper number 8, paragraph 9.

Response to Arguments

9. The rejection of claims 8 under 35 U.S.C. 102(b) as being anticipated by Schraner et al (1989, abstract), is traversed on the grounds that the instantly claimed invention is directed to a composition that comprises “an Echinacea preparation and poultry feed.”
10. It is the position of the examiner that while it is true that claim 8 has been amended to recite the phrase “poultry feed”, the incorporation of this phrase into claim 8 only defines a recited intended use of the claimed composition.

The composition is defined to be one that is “effective for enhancing an immune response to an anticoccidial vaccine and poultry feed”. The claimed composition is a “composition comprising an Echinacea preparation and nothing more. The poultry feed phrase used to amend claim 8 does not define an additional composition component. Claim 8 can be read in such a way

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that the phrase “poultry feed” modifies the amount of Echinacea that is present in the composition, the amount being that which is effective for enhancing an immune response, the immune response being “to an anticoccidial vaccine and poultry feed”. Applicant’s arguments are not commensurate in scope with the instantly claimed invention.

11. The rejection of claim 8 under 35 U.S.C. 102(b) as being anticipated by Hockertz, S (1990) is traversed on the grounds that the instantly claimed invention is directed to a composition that comprises “an Echinacea preparation and poultry feed.”

12. It is the position of the examiner that while it is true that claim 8 has been amended to recite the phrase “poultry feed”, the incorporation of this phrase into claim 8 only defines a recited intended use of the claimed composition.

The instantly claimed composition is defined to be one that is “effective for enhancing an immune response to an anticoccidial vaccine and poultry feed”. The claimed composition is a “composition comprising an Echinacea preparation and nothing more. The poultry feed phrase used to amend claim 8 does not define an additional component of the composition . The phrase “poultry feed” of Claim 8 can be read as modifying the amount of Echinacea that is present in the composition, the amount being that which is effective for enhancing an immune response, the immune response being “to an anticoccidial vaccine and poultry feed”. Applicant’s arguments are not commensurate in scope with the instantly claimed invention.

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13. The rejection of claims 8-9 under 35 U.S.C. 102(b) as being anticipated by Kutilek, III et al (US Pat. 5,770,217), is traversed on the grounds that the instantly claimed invention is directed to a composition that comprises "an Echinacea preparation in combination with poultry feed."

14. It is the position of the examiner that while it is true that claim 8 has been amended to recite the phrase "poultry feed", the incorporation of this phrase into claim 8 only defines a recited intended use of the claimed composition.

The claimed composition is defined to be one that is "effective for enhancing an immune response to an anticoccidial vaccine and poultry feed". The claimed composition is a "composition comprising an Echinacea preparation, and nothing more. The poultry feed phrase used to amend claim 8 does not define an additional composition component, as now claimed. Claim 8 does not have any commas off setting any specific phrases, and can be read a number of different ways, one being that the phrase "poultry feed" modifies the amount of Echinacea that is present in the composition, the amount being that which is effective for enhancing an immune response, the immune response being "to an anticoccidial vaccine and poultry feed". Applicant's arguments are not commensurate in scope with the instantly claimed invention.

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15. The rejection of claims 8 and 10 under 35 U.S.C. 102(e) as being anticipated by Squires (US Pat. 6,355,684) is traversed on the grounds that the instantly claimed invention is directed to a composition that comprises “an Echinacea preparation and poultry feed” and the carriers of Squires are not conventional poultry feeds.

16. It is the position of the examiner that while it is true that claim 8 has been amended to recite the phrase “poultry feed”, the incorporation of this phrase into claim 8 only defines a recited intended use of the claimed composition.

The composition is defined to be one that is “effective for enhancing an immune response to an anticoccidial vaccine and poultry feed”. The claimed composition is a “composition comprising an Echinacea preparation and nothing more. The poultry feed phrase used to amend claim 8 does not define an additional composition component. Claim 8 can be read in such a way that the phrase “poultry feed” modifies the amount of Echinacea that is present in the composition, the amount being that which is effective for enhancing an immun response, the immune response being “to an anticoccidial vaccine and poultry feed”. Applicant’s arguments are not commensurate in scope with the instantly claimed invention.

Even if the claims were amended to comprise a poultry feed component, Squires claims compositions that comprise Echinacea together with grain powder or cornmeal which are forms of poultry feed for administration to birds, and farm animals. The recited intended use of the composition does not define over the prior art, as the claimed composition has not been distinguished from the composition of Squires.

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Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
18. Paluch (US Pat. 6,312,746) is cited to show an animal food that comprises echinacea for enhanced immune response (see col. 7, lines 26-30).
19. Keller et al (US Pat. 5,891,465) is cited to show a oral delivery formulation for birds (see col. 8, line 20) that comprises echinacea (see abstract).
20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginny Portner whose telephone number is (703)308-7543. The examiner can normally be reached on Monday through Friday from 7:30 AM to 5:00 PM except for the first Friday of each two week period.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909. The fax phone number for this group is (703) 308-4242.

The Group and/or Art Unit location of your application in the PTO will be Group Art Unit 1645. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to this Art Unit.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Vgp

April 18, 2003


LYNETTE R. F. SMITH
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